(1)

Supreme Court, U.S.
FILED

FEB 24 2003

OFFICE OF THE CLERK

NO. 02-12 74

IN THE

SUPREME COURT OF THE UNITED STATES

DAWN B. MIDDLESTEAD,
PETITIONER, PRO SE,
vs.

HONORABLE ARTHUR H. TAYLOR, CIRCUIT JUDGE, State of Florida, County of Dade; LLOYD L. MIDDLESTEAD; PAUL E. SAWYER, 111, and P.A; HONORABLE EUGENE J. FIERRO,, CIRCUIT JUDGE, State of Florida, County of Dade; HARVEY RUVIN, CLERK of the Circuit and County Courts, Dade County, Florida; GENE RUBIN, ESQ.; MARY CAY BLANKS, CLERK of the Third District Court of Appeals of Florida; MELISSA TENENBAUM, GENERAL MASTER, Circuit Court, State of Florida, County of Dade; HONORABLE MICHAEL J. SAMUELS, COUNTY COURT JUDGE, State of Florida, County of Dade,
RESPONDENTS.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit
Docket No.: 02-14212-GG

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35 pp

QUESTIONS PRESENTED FOR REVIEW

(POINT ONE)

WHETHER FEDERAL COURT HAS JURISDICTION OVER PERSONS ACTING "UNDER COLOR OF STATE LAW" WITH OTHERS IN A CIVIL RIGHTS CONSPIRACY THAT VIOLATE SUBSTANTIAL FEDERAL CONSTITUTIONAL RIGHTS

(POINT TWO)

WHETHER JUDICIAL OFFICERS ARE "IMMUNE WHEN THEY ACT WITHOUT JURISDICTION AND IN THE FACE OF VALID STATUTES

(POINT THREE)

WHETHER JUDICIAL IMMUNITY INSULATES FROM DAMAGE LIABILITY THOSE STATE OFFICIALS AND PRIVATE PERSONS WHO CORRUPTLY CONSPIRE WITH THE JUDGE

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JURISDISCTIONAL STATEMENT
OPINIONS BELOW

The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1).

The opinions below in this case are unreported. They are reformatted in the Appendix infra., to wit: "Sua sponte" "Order of Dismissal" under Federal Rule of Civil Procedure 12(b)(2) for lack of jurisdiction over the person; Ordered the Clerk to "close this case"; and denied all pending motions as moot, of the U.S. District Court for the Southern District of Florida (Miami Division), entered on June 28, 2002, by Honorable Federico A. Moreno, District Judge, under Docket No. 02-21916-CIV-MORENO. (Appendix A, infra., p.18-23); The Opinion of the Court of Appeals for the Eleventh Circuit "on its own motion" "DISMISSES this appeal as frivolous. See Eleventh Circuit Rule 42-4" and "All remaining pending motions are DENIED AS MOOT," entered November 01, 2002, by Birch, Barkett, and Wilson. (Appendix B, infra. p.24).

CONSTITUTIONAL, STATUTORY, AND RULES PROVISIONS INVOLVED

The Constitutional, Statutory, and Rules Provisions Involved in this case are lengthy and their pertinent text is set out in the Appendix C, infra., to wit:

The Fifth Amendment to the U.S. Constitution (p.25);
The Fourteenth Amendment to the U.S. Constitution (p.25);
42 U.S.C. Section 1983 (p.25);
42 U.S.C. Section 1985(3) (p.25-26);
28 U.S.C. Section 1331 (p.26);
28 U.S.C. Section 1343 (p.26-27);
USDC-S-FL-LOCAL RULE 7.1(B)(3) (p.27);
Rule 27(c), Fed.R.App.P. (p.27);
Florida Statutes Section 38.02 (p.27-28);
Florida Statutes Section 38.05 (p.28);

Florida Statutes Section 38.10 (p.28-29);
Florida Rules of Civil Procedure, Rule 1.490 (p.29);
Family Law Rules of Procedure, Rule 12.490(b) (p.29);
Florida Rules of Appellate Procedure, Rule 9.100(h) (p.29);
Florida Statutes Section 28.13 (p.29-30)
The Florida Constitution, Section 19(c)(4); (p.30).

STATEMENT OF THE CASE

Petitioner, pro se, DAWN B. MIDDLESTEAD, as plaintiff, pro se, hereinafter referred to as DAWN, filed, on June 27, 2002, her Civil Rights Complaint with its attached Exhibits A thru L, in the U.S. District Court for the Southern District of Florida, under Case No. 02-21916-CIV-MORENO, pursuant to Article III, Section 2, and under 28 U.S.C. Sections 1343, 1331, 2201, 2202, 2283, arising under 42 U.S.C. Sections 1983, 1985(3), 1988, and the 5th and 14th Amendments, U.S. Constitution.

DAWN'S complaint alleged that she, as a "female", "pro se" litigant, was discriminated against and denied access to the state trial and appellate court in a state court dissolution of marriage action, without any due process of law, or an opportunity to be heard "on the merits" before an impartial tribunal, by "Officers of the Court," acting in a Civil Rights conspiracy in clear absence of jurisdiction or in the face of valid statutes, in collusion with others, and used the state court as its vehicle to conceal, steal and deprive DAWN of her real and personal property without due process or compensation.

The complaint documents that assigned CIRCUIT JUDGE TAYLOR, side-stepped his duty to rule on DAWN'S Motion For Temporary Relief after scheduling and conducting a hearing thereon, by his "sua sponte" order recusing himself in violation of F.S. Sec. 38.05, without F.S. Sec. 38.02 mandatory requirement. His recusal,

extinguished his jurisdiction, and his order to RUVIN, CLERK, to assign another judge and his failure to notify the chief judge for the required "Order of Assignment," failed to comply with statutory requirements and elementary principals of procedure, and was without authority and in violation of F.S. Sec. 38.09.

JUDGE TAYLOR further violated DAWN'S constitutional rights by signing two subsequent identical orders denying defendant's Motion To Dismiss that were "void" for lack of jurisdiction and contained bold face lies that he had conducted an evidentiary hearing thereon, that DAWN had testified thereat and that she entered into an "agreement".

Defendant RUVIN, CLERK, violated his limited ministerial duty by failing to affix the required official clock-in time stamps to these orders, and deleting JUDGE TAYLOR'S name from the docket, among other violations.

JUDGE FIERRO forfeited his immunity because of his failure to comply with statutory requirements and elementary principals of procedure when he did precisely what the constitution and statutes did not permit him to do and exceeded his position without the required F.S. 38.09 "Order of "Assignment", ignored DAWN'S pre-approved "pro se" Petition For Dissolution of Marriage (over $50.000), against LLOYD L. MIDDLESTEAD HUSBAND); Etal (marital corporations), her motions, HUSBAND'S Answer, (represented by PAUL E. SAWYER, III) (SAWYER) and, "sua sponte" ordered MELISSA TENENBAUM, General Master to hear husband's Counterclaim (under $50,000.) and all other issues, without DAWN'S required permission in violation of Rule 1.490 Florida Rules of Civil Procedure and Rule 12.490(b), Family Rules of Procedure.

Thereafter, to thwart review of DAWN'S "pro se" Petition For Writ of Certiorari to compel JUDGE TAYLOR

to rule; declare his orders void; and make JUDGE FIERRO recuse himself and comply with the provisions of F.S. Sec. 38.10 that he must proceed no further, JUDGE FIERRO relied on SAWYER'S unauthorized representation of DAWN when he noticed DAWN'S Affidavit of Prejudice against him for hearing. This enable him to find the Affidavit "legally insufficient," and proceeded to Final Judgment on HUSBAND'S Counterclaim, that omitted the corporations and gave HUSBAND title to unspecified real property and falsely named SAWYER as DAWN'S attorney thereon, denying DAWN'S constitutional right to represent herself and to have "pro se" review thereon.

BLANKS, CLERK, failed to comply with statutory requirements and elementary procedure in violation of Florida Rules of Appellate Procedure 9.100(f), by permitting REIBMAN, ESQ., a total stranger, to file an unauthorized Motion To Dismiss, in DAWNS Petition For Writ of Mandamus action, and keeping an incorrect record in the Third District Court of Appeals of Florida.

COUNTY COURT JUDGE SAMUELS, is independently divested of absolute judicial immunity by his complete lack of jurisdiction in the Circuit Court, as known by him, and doffs the cloak of immunity when he, without notice, authority, or reason, in collusion with SAWYER and HUSBAND, fraudulently held exparte hearing and signed his void order granting HUSBAND'S motion for exclusive use and occupancy, in violation of DAWN'S constitutional rights, which he fraudulently signed as a "Circuit Judge.

SAWYER illegally acted as DAWN'S attorney, with TENENBAUM, SAMUELS and FIERRO, had illegal exparte hearings, and in collusion with RUVIN, Clerk, noticed DAWN'S Affidavit of Prejudice against FIERRO before him to defeat DAWN'S Writ of Certiorari.

To further obstruct justice, and thwart Federal Court jurisdiction, in DAWN'S pending Federal Civil Rights

Case No. 02-211907-Civ-King, against police officers HUSBAND, and State Officials, for her illegal eviction and cover-up, wherein DAWN challenged the validity of COUNTY COURT JUDGE SAMUELS use and occupancy order, utilized, outside the record, as their defense, SAWYER obtained an order, in collusion with FIERRO for TENENBAUM to conduct additional illegal proceedings.

TENENBAUM, GENERAL MASTER with knowledge that she lacked jurisdiction by DAWN'S failure to give required "consent" and her timely objection to her appointment, acted unconstitutionally and in the face of Rule 1.490, Florida Rule of Civil Procedure, and Family Rules of Procedure, Rule 12.490(b), expressly depriving her of jurisdiction, conducted unauthorized exparte proceedings without DAWN, and filed an unauthorized report, thereon lying as to her appointment and date and making reference she could not "conclude" hearings.

REIBMAN, ESQ., continued his efforts to obstruct justice in DAWN'S Federal Court Civil Rights Case No. 02-21107-Civ-King, by procuring an unauthorized order of Magistrate O'Sullivan that took judicial notice of Judge Moreno's Dismissal Order herein (Appendix A, p.18-23, infra.), as a defense to DAWN'S Petition For Writ of Mandamus in the Eleventh Circuit under Case No. 02-15810-I to compel Judge King to follow Local Rule 7.1(B)(3) and have a hearing or rule on DAWN'S Motion For Summary Judgment, filed May 15, 2002. The appellate court, by two single judges ANDERSON and BLACK, Circuit Judges, denied the writ on November 20, 2002, and denied rehearing on December 27, 2002. DAWN'S motion for hearing or rehearing en banc pursuant to Rules (35)(b), 27(c), Fed.R.App.P., was returned by the clerk, received but not filed.

The day after this case was filed, Honorable Federico A. Moreno, United States District Judge below, "gave absolute

and qualified immunity" to all the Defendants, and "sua sponte" DISMISSED this action under Federal Rules of Civil Procedure 12(b)(2), for lack of jurisdiction over the person and directed the Clerk of Court to "close this case" and also "ADJUDGED that all pending motions are DENIED as moot," without any pending motions. DAWN received her copy in the mail from REIBMAN a day before appeal time expired (Appendix A , infra.,p.18-23).

HUSBAND to date, has total care, custody and control of all the marital property, including company and corporate interests and assets, without any compensation to DAWN, and the state court retains illegal jurisdiction over DAWN, with threat of Rule 11 Sanctions below. The Eleventh Circuit sua sponte Dismissal of the appeal as "frivolous", under its Local Rule 42-4, further denied, as moot, DAWN'S unopposed pending motions to: (1) correct the trial court record; (2) correct the appellate court record; (3) strike the four briefs of Appellees; vacate REIBMAN'S unauthorized extension (4). (Appendix B, infra.p.24).

The Clerks below, and herein have insulated the Respondents, by using an incorrect style of the case, and failed to furnish required copies of the "sua sponte" Dismissal Orders of the District, Court, DAWN'S Notice of Appeal, and, Circuit Court's Dismissal Order, and Justice Kennedy's Order Granting an Extension of Time to File this Writ to and including February 28, 2003, App.02A607.

REASONS FOR GRANTING THE WRIT

ARGUMENT (POINT ONE)
WHETHER FEDERAL COURT HAS JURISDICTION OVER PERSONS ACTING UNDER COLOR OF STATE LAW WITH OTHERS IN A CIVIL RIGHTS CONSPIRACY THAT VIOLATE SUBSTANTIAL FEDERAL CONSTITUTIONAL RIGHTS

The Courts below have so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this court's supervisory power. As appears in the Statement of the Case (p.1-6, Supra) an exceptional strong showing was made in the Court of Appeals that DAWN'S appeal raises an abundance of substantial questions, every one of them not plainly "frivolous."

The District Courts decision urges that any act of a judicial nature entitled JUDGE FIERRO to absolute immunity with blanket coverage to the other defendants as his so called "agents," and excluded the remaining defendants as private individuals.

DAWN'S Civil Rights Complaint clearly shows that "Officers of the Court" acting "under color of state law," aided, abetted, caused, allowed, ignored, avoided, and/or assisted in the deprivation of DAWN'S constitutional rights and privileges and concealed, took and stole DAWN'S property without due process or compensation in a fraudulent, unconstitutional civil rights conspiracy, conceived by SAWYER and HUSBAND using the State Court Divorce Case as its vehicle, that deprived DAWN of having or expressing any right or privilege as a citizen of the United States. This case is actionable in the District Court and not merely "frivolous." See Hobson v Wilson, 737 F.2d 5 (1984). DAWN'S constitutional Rights were grossly violated when the Defendants, "Officers of the Court," in collusion with other willful participants, acted "under color of state law" beyond the bounds of lawful jurisdiction or authority, and in such a manner that the unlawful acts were done while the officials were purporting or pretending to act in the performance of their duties. The legal procedures set by statute and court procedures were not followed resulting in prejudicial, unfair, unequal

treatment to DAWN, a "female" "pro se" litigant being thrown out in the street and left homeless and penniless, without procedural due process, or compensation. This action clearly shows "misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." United States v Classic, 313 U.S.299, 326 (1941).

This Court has interpreted the "Due Process Clause of the Fourteenth Amendment to serve as a means whereby the Bill of Rights has become binding on state government, which prohibits the deprivation of liberty or property without due process of law. This due process claim is cognizable as there is a recognized liberty or property interest at stake. Board of Regents v. Roth, 408 U.S. 564, 69 (1972) – The phrase "procedural due process" refers to the Due Process Clause that apply to the procedure of any government action that deprives an individual of life, liberty, or property. Procedural due process limits the exercise of power by the state by requiring that they follow all legal procedures set by statute and court practice. It is clear, that the officers of the court forfeited their immunity because of their failure to comply with elementary principles of procedural due process. Plaintiff has claimed violation of her due process rights and the court must determine what procedural protections are "due" her.

ARGUMENT (POINT TWO)
WHETHER JUDICIAL OFFICERS ARE "IMMUNE WHEN THEY ACT WITHOUT JURISDICTION AND IN THE FACE OF VALID STATUTES

A proposed Congress Judiciary Committee Bill, Jan 1, 1997, cited as a bill placing "Limits on Judicial Immunity," is the solution to the problem of state politicians acting as judges in political fiefdoms, and after violating

constitutional law, retreating behind the shield of common law judicial immunity placing "Limits on Judicial Immunity", and the protective camaraderie of brother state judges. This case at bar has the necessary constitutional deprivation circumstances set forth under which the common law doctrine of judicial immunity is to be denied a state judge, to wit: denial of meaningful access to the court; exparte acts not allowed by statute; denial of effective notice; access to a valid court at all times; thwarting meaningful appellate review in the state court of appeals; denial of right to possession, use and benefit of real and personal property (this issue defines how a society cares for its citizens); denial of just compensation for property taken by state action (more than condemnation); misuse/abuse of clearly written/defined state statutes. Misuse of statutes goes to the core of equal protection and due process. All these constitution deprivations, plus the right to represent herself and have her "pro se" complaint and motions considered by an impartial tribunal endured by DAWN, are clearly not "frivolous" and are nullities and must be set aside.

The mere fact that three of the defendants are judges does not mean that any or all of them have absolute judicial immunity, especially when their acts infringed upon DAWN'S constitutional rights. Judges cannot invoke judicial immunity for acts that violate litigants civil rights; Robert Craig Waters, Tort & Insurance Law Journal, Spr.1986 21 n3, p509-516. The Defendant Judges' unconstitutional acts were done in the clear absence of all jurisdiction or in the face of valid statutes, therefore, "Judicial Immunity" is NOT absolute. The Defendant "Officers of the Court" with others, were engaged in "fraud upon the court" when they committed the fraud during the proceedings, rendering "void" the orders and judgments of

that court, and this court has the power to determine that the state court judgments are in fact void.

When the Defendant JUDGES knew that they lacked jurisdiction, or acted in the face of clearly valid statutes expressly depriving them of jurisdiction, judicial immunity is lost. Rankin v Howard (1980) 633 F.2d 844, cert. den Zeller v Rankin, 101 S.Ct.2020, 451 U.S.939, 68 L.Ed.2d 326, and he may be held liable for abuse of process. State use of Little v. U.S. Fidelity & Guaranty Co., 217 Miss.576, 64 So.2d 697.

JUDGE TAYLOR cannot enjoy absolute judicial immunity after he permanently extinguished himself of jurisdiction upon his recusal, that disabled him to act as he did thereafter, issuing void, illegal orders as a renegade judge, persistent in wielding the tools of his office after having been affirmatively stripped of them and was independently divested of absolute judicial immunity. Once trial judge recuses himself, further orders thereafter are void. Schwartz v. Schwartz, App.3 Dis.41 So.2d 716 (1983),.When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. Rankin v. Howard, (1980) 633 F.2d 844,cert den. Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.

JUDGE FIERRO'S, replacement of JUDGE TAYLOR, was not acquired in compliance with F.S. .Sec. 38.09 with no mandated "Order of Assignment". Record should affirmatively show jurisdiction of judge, acquired by disqualification of another, was acquired in compliance with statute. McMullen v State, 93 Fla.693, 112 So.462 (1927) and record should affirmatively show that judge, to whom matter was presented because of disqualification of another duly acquired jurisdiction by such disqualification. McMullen v. State, Id.

JUDGE FIERRO, forfeited his immunity because of his failure to comply with statutory requirements and elementary principals of law when he continued to act unconstitutionally and in the face of valid statutes, when he trespassed upon the case, ignored DAWN'S complaint, HUSBAND'S Answer, and "sua sponte" entered his "Order of Referral" to TENENBAUM, General Master on HUSBAND'S Counterclaim, without DAWN'S required consent, in violation of Rule 1.490(c), Fla.R.Civ.P.; and Rule 12.490, Family Law Rules of Procedure, which further makes all TENENBAUM'S acts and omissions without jurisdiction, and void.

JUDGE SAMUELS is independently divested of absolute judicial immunity and doffs the cloak of immunity when he, a County Court Judge, trespassed upon the Circuit Court divorce case with knowledge that he had no jurisdiction or right to do so and was acting unconstitutionally and in complete absence of all jurisdiction when he conducted proceedings over which he lacked any semblance of subject-matter jurisdiction, and signed his order impersonating a Circuit Judge that took away DAWN'S right to possession, use, and benefit of her real property without law, notice or compensation. In examining entitlement to immunity this court in Piper v. Pearson, 2 Gray 120, held that an act done in complete absence of all jurisdiction cannot be a judicial act. It is no more than the act of a private citizen, pretending to have judicial power which does not exist at all. In such circumstances, to grant absolute judicial immunity is contrary to the public policy expectation that there shall be a Rule of Law, and that "where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction," cited in Bradley v Fisher, 13 Wall 335, 20 L.ed. 646, and judge will be subject to liability when he acted in "clear absence of all jurisdiction." In a

jurisdictional vacuum, (that is, absence of all jurisdiction) the second prong necessary to absolute judicial immunity is missing. Stump v Sparkman, 335 U.S.349; Rankin v Howard. Id.; Ashelman v.Pope, 793 F.2d 1072(1986). "No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence." Ableman v Booth, 21 Howard 506 (1859), as in the case at bar.

ARGUMENT (POINT THREE)
WHETHER JUDICIAL IMMUNITY INSULATES FROM DAMAGE LIABILITY THOSE STATE OFFICIALS AND PRIVATE PERSONS WHO CORRUPTLY CONSPIRE WITH THE JUDGE

TENENBAUM, GENERAL MASTER, was fully aware that she, a quasi-judicial, ministerial officer lacked all subject matter jurisdiction, and was not empowered by statute to act as she wrongly did, in the face of clearly valid statutes. Rankin v Howard, Id. Zeller v Rankin, Id., and cannot claim the immunity of the sovereign. Cooper v O'Conner, 99 F.2d 133. There is a general rule that a ministerial officer who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign.

RUVIN, CLERK in violation of F.S. Sec. 38.09, without mandated "Order of Assignment" or legal authority, assigned JUDGE FIERRO to the case, and further failed to keep a true and correct record, or to time-stamp orders. Clerk's authority is entirely statutory, and his official action, to be binding on others, must be in conformity with statute. Security Finance Co. v Gentry, 109 So.220,91 FLa.1015, followed in 109 So.222, 91.1024. The same

general rule applies, that RUBIN, who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign. Cooper v. O'Conner, Id. The same general rule applies to BLANKS, CLERK, who failed to keep a correct record and permitted REIBMAN, ESQ, a total stranger, to file his unauthorized Motion To Dismiss in DAWN'S Petition For Writ of Mandamus case, in violation of Fla.R.App.R. 9.100(f),

The remaining "private persons conspired with the other defendants causing DAWN'S deprivation of her property, without due process of law, or compensation. In Dennis v Sparks, 449 U.S.24 (1980), the Court of Appeals for the Fifth Circuit, held that the actions against the private parties accused of conspiring with the judge is not subject to dismissal. Private persons, jointly engaged with state officials in a challenged action, are acting "under color of law" for purposes of Section 1983 action, and the judges immunity from damages liability for an official act that was allegedly the product of a conspiracy involving unconstitutional acts with the judge, does not change the character of the action or that of his co-conspirators. Historically at common law, judicial immunity does not insulate from damages liability those private persons who corruptly conspire with the judge. Gravel v United States, 408 U.S. 606, for providing a remedy "against those private persons who participated in subverting the judicial process and in so doing, inflicted injury on other persons." Bivens, 403 U.S. at 389, permitting a case against federal agents, is the counterpart of this case brought under Section 1983 against state officials who infringe plaintiff's federal constitutional or statutory rights. See Bunz v. Economou, 4 38 U.S.478.503-04 (1978): McSurely v Hutchinson, 823 F.2d 1002. 1005 (6th Cir.1987),cert.den. 485 U.S.934 (1988), and as will be seen in Wyatt v Cole, 504 US

158,159 (1991), this court held that a party who is not a public official may be liable under 42 U.S.C. Section 1983 and yet not be entitled to qualified immunity because, if not a public official, the reason for affording qualified immunity does not exist.

ARGUMENT (POINT FOUR)
WHETHER THE JUDGMENTS AND ORDERS OF THE STATE COURT ARE VOID

The Defendants' "Fraud upon the court" makes void the orders and judgments of the state court in this case, which were rendered in violation of Plaintiff's constitutional protections. The Defendants' "officers of the court" were engaged in and committed fraud during the divorce proceeding, constituting "fraud upon the court." In Bulloch v.United States, 763 F.2d 1115,1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself....It is where the court or member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function—thus where the impartial functions of the court have been directly corrupted. "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Kenner v C.I.R.,387 F.3 689 (1986) Moore's Federal Practice, 2d ed., p.512, pars. 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." The concept that human beings have inalienable rights and liberties that cannot justly be violated by others or by the state is linked to the history of

"democracy." Individual freedom can survive only under a system of law by which the sovern and the governed are bound. Such a system of fundamental laws is known as a "constitution" and a judgment may not be rendered in violation of constitutional protections by fraud upon the court, and is void. The limitations inherent in the requirement of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees, Hanson v Denckla, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228, and all proceedings founded on the void judgment are themselves regarded as invalid, 30 Am Jur Judgments 44, 45.

Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. Earle v McVeigh, 91 US 503, 23 L Ed 398. The state court fraudulently pretended that Plaintiff made an "agreement," and that she was represented by Defendant lawyer SAWYER, and refused to consider her "pro se" complaint, motions, petitions, etc. A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. Sabariego v Maverick, 124 US 261, 31 L Ed 430, 8 S Ct 461, and is not entitled to respect in any other tribunal, and this court has the power to determine that the void judgments do not create any binding obligation. Federal decisions addressing void state court judgments include Kalb v. Feuerstein (1940). 308 US 433, 60 S Ct 343, 84 L ed 370; Ex parte Rowland (1882) 104 US 604, 26 L.Ed. 861: "A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its want of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power to do

so exists. "People v. Green, 71 Cal. 100 (16 Pasc, 197, 5 Am.St.Rep. 448), and "the power to do so exists" herein. If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1 Freeman on Judgments, 120-c.) An illegal order is forever void.

"A void judgment is no judgment at all and is without legal effect." Jordon v Gilligan, 500 F.2d 701, 710 (6th Cir. 1974).

CONCLUSION

DAWN B. MIDDLESTEAD, Petitioner, pro se, humbly prays this Honorable Court GRANT this Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit Docket No.: 02-14212-GG, and Summarily Reverse or Vacate the Judgments Below, with directions to discontinue exparte proceedings, correct the records, and furnish copies of orders to all parties.

DATED:

FEBRUARY 24, 2003.

RESPECTFULLY SUBMITTED,

"S/ Dawn B. Middlestead"
DAWN B. MIDDLESTEAD,
PETITIONER, PRO SE
192 S. W. 52ND TERRACE
PLANTATION, FL. 33317-3623
(954) 583-2527

PROOF OF SERVICE

I, DAWN B. MIDDLESTEAD, PETITIONER, PRO SE, HEREIN, HEREBY CERTIFY that on this 24th day of February, 2003, I mailed to the Clerk of the Supreme Court of the United States, 40 copies (one original) of my Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit, Docket No.: 02-14212-GG, with Appendix,infra.,and that all parties required to be served have been served copies thereof , by mail this 2 th day of February, 2003, i.e.: Robert A. Ginsburg, Dade County Attorney, by Lee Kraftchick, Asst., Suite 2810, 111 N.W. 1st Street., Miami, FL. 33128, (305) 375-1993, attorney; for Judge Fierro; Lloyd L. Middlestead, 1171 N.W. 139 Street, North Miami, FL 33168 (305) 681-8675; Paul E. Sawyer, III, & P.A., 1512 E. Broward Blvd., Ft. Lauderdale, FL 33301 (954) 728-8500; Robert A. Butterworth, Attorney General, by Charles M. Fahlbusch, Asst., Office of the Attorney General, 110 S.W. 6th Street 10th Floor, Ft. Lauderdale, FL.33301 (954) 712-4600, Attorney for Judge Taylor; Harvey Ruvin Clerk, 73 W. Flagler Street, Miami, Fl. 33130 (305 275-1155; Melissa Tenenbaum, General Master, and Michael J. Samuels, County Judge, each at 174 N.W. 1st Av., Miami, FL. 33130 (305) 275-1155; Gene Reibman, Esq., 600 N.E. 3rd Av., Ft. Lauderdale, FL. 33304 (954) 467-6715; and Joanne E. Sargent, Esq., Third District Court of Appeal. 2001 S.W. 117 Av., Miami, FL. 33175 (305) 229-3200, Attorney for Mary Cay Blanks, Clerk. That I declare under penalty of perjury that the foregoing is true and correct.

Executed on:
FEBRUARY 24, 2003

"S Dawn B. Middlestead"
DAWN B MIDDLESTEAD,
PETITIONER, PRO SE
192 S.W. 52ND TERRACE
PLANTATION, FL. 33317-3623

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

CLOSED
CIVIL CASE

Case Number: 02-21916-CIV-MORENO

Filed by S.P. D.C

JUN 28 2002

CLARENCE MADDOX
CLERK U.S.DIST.CT.
S.D. OF FLA

DAWN B. MIDDLESTEAD,

Plaintiff,

vs.

THE HONORABLE ARTHUR H. TAYLOR, Circuit Judge; THE HONORABLE EUGENE FIERO, Circuit Judge; GENE REIBMAN, ESQ MARY CAY BLANKS, Clerk; HARVEY RUVIN, Clerk; MELISSA TENENBAUM, General Master, HONORABLE MICHAEL J. SAMUELS, COUNTY JUDGE; LLOYD L. MIDDLESTEAD, and PAUL E. SAWYER,

Defendants_____/

ORDER OF DISMISSAL

THIS CAUSE came before the Court upon a sua sponte review of Plaintiff's complaint.

THE COURT has considered the pertinent portions of the record, and being otherwise fully advised in the premises, it is

APPENDIX A

ADJUDGED that the case is DISMISSED as this Court is without jurisdiction. Plaintiff brings this action against judges and attorneys that administered her divorce proceedings in state court. In her complaint, Plaintiff alleges she suffered $1.1 million in damages caused by the resolution of her divorce case in the state court. Judge Eugene Fierro entered a final judgment of dissolution of marriage on June 29, 1999 in that case. This action represents nothing more than an inappropriate collateral attack against the judges and their agents involved in the divorce proceeding without exhausting the appropriate avenues of appeal.

As the Supreme Court noted in Mitchell v Forsyth, 472 U.S. 511, 526 (1985), a defendant entitled to absolute or qualified immunity enjoys "immunity from suit rather than a mere defense to liability." It defeats the suit at the onset. See Imbler v Pachtman, 424 U.S. 409, 419 n.13 (1976). Therefore, the judges named in this suit are entitled to a determination of their immunity as a threshold matter to be resolved before any other in this litigation. See Siegert v Gilley, 500 U.S. 226, 232 (1991)("One of the purposes of immunity, absolute or qualified, is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit.")

It is well-settled that judges are entitled to absolute judicial immunity from damages for acts taken while acting in their judicial capacity. See Mireless v. Waco, 502 U.S. 9, 11 (1991)(per curiam); Bolin v.Story, 225 F.3d 1234, 1239 (11th Cir. 2002). Allegations that a judge conspired with private individuals who are not immune does not defeat the immunity as long as the judge did not act in the "absence of all jurisdiction." Simmons v. Conger, 86 F.3d 1080, 1084-85 (11th Cir. 1996). The rationale undergirding

this settled doctrine is to permit judges to act independently and without fear of consequences. Stump v Sparkman, 435 U.S. 349, 355 (1978). Reviewing the four corners of Plaintiff's complaint and its attachments, it is evident that the judges named in this suit were acting within their judicial discretion and not in the "absence of all jurisdiction." Accordingly, this Court finds the judicial defendants immune from suit.

The issue then is whether this judicial immunity extends to any other defendant named in this action, namely the General Master and the Clerk of Court. Judicial immunity narrowly extends to agents of the court. The Eleventh Circuit has stated that "[n]onjudicial officials are encompassed by a judge's absolute immunity when their officials duties 'have an integral relationship with the judicial process." Roland v Phillips, 19 F.3d 552, 554 (11th Cir. 1994) (quoting Ashbrook v.Hoffman, 617F2d 474,476 (7th Cir. 1980)). Absolute quasi-judicial immunity relieves nonjudicial officials from the burdens of a lawsuit when the action taken by the official is functionally related to the judicial process. See id.

This quasi-judicial immunity applies to the General Master and the Clerk of Court named as Defendants in this case. The General Master in this case was employed at the behest of the judge to carry out limited judicial functions. Surely, the general master, acting in this capacity, is immune from suit. See In re Silicone Gel Breast Implants, 174 F.Supp.2d 1242,1267 (N.D.Ala.2001)(holding special master immune from suit).

Notably, the only allegations against the Clerk of Court Harvey Ruvin and Mary Cay Blanks are that they recorded the state judge's final order and maintained the docket as required by Florida Judicial Administration Rule 2.080. That rule states that "[t]he clerk of the circuit court shall

APPENDIX A

report the activity of all the cases." The complaint does not support the proposition that the clerk of court was derelict in filing documents in the state court's docket. Rather, the complaint appears to state a claim for the opposite scenario-that the Clerk filed documents in compliance with established statutory duties. Immunity therefore attaches to the Clerk's performance of these duties that are functionally related to the judicial process. In any event, Plaintiff's claim against the Clerk of Court does not meet the "case and controversy" requirements of Article III of the United States Constitution. As noted by the Supreme Court in Utah v Evans, 122 S.Ct. 2191, 2197(2002), a "lawsuit does not fall within this grant of judicial authority unless, among other things, courts have the power to "redress" the "injury" that the defendant allegedly "caused" the plaintiff." The complaint readily indicates that the Clerk of Court did not injure Plaintiff in any way that this Court can redress.

Likewise, the case and controversy requirements of Article III are not satisfied as to the remaining Defendants, Plaintiff's former spouse and his attorneys, Gene Reibman and Paul Sawyer. This Court has no jurisdiction to hear suit against these Defendants under the federal causes of action asserted. First, there is no federal cause of action against private individuals under the Fifth and Fourteenth Amendments to the United States Constitution. See U.S. Const.amend.V; U.S.Const.amend.XIV; Lucom v Atlantic Nat'l Bank of W. Palm Beach, Fla., 354 f.2d 51,55 (5th Cir. 1965)(recognizing that the Fourteenth Amendment creates a cause of action only against state actors); Davis v. Passman, 442 U.S. 228 (1979)(discussing implied cause of action under Fifth Amendment as applying to federal actor). Moreover, 42 U.S.C. Section 1983 requires a state actor. See Supreme Court of the United States v. John Doe,

122 S.Ct. 2268, 2273 (2002). Plaintiff's former spouse and his attorneys are not agents of the state. Therefore, this Court cannot redress any injury to Plaintiff under 42 U.S.C. Section 1983.

Additionally, Plaintiff mentions 42 U.S.C. Sections 1988 and 1985(3) in her complaint as viable causes of action against her former spouse and his attorneys. This Court cannot entertain a lawsuit under Section 1988, which relates to a question of damages once a civil rights violation has been established. See Johnson v Marton, 55 F.R.D. 282 (S.D.N.Y.1972). Simply put, Section 1988 does not create a federal cause of action. Moreover, Plaintiff's attempt to include a Section 1985 cause of action is in vain. Plaintiff's allegations state that the Defendants, the judicial actors and their agents all of whom are immune from suit, conspired with her former spouse and his lawyers to deprive her of marital property. No case or controversy can exist under this cause of action because this Court has found the alleged conspirators, the judicial actors and their agents, immune. That immunity eliminates this Court's jurisdiction to determine whether they indeed conspired with an outside party in violation of the statute. See Simmons, 86 F.3d at 1084-85 (holding that the allegations that a judge conspired with private individuals who are not immune does not defeat the immunity. Even apart from the immunity issue, judicial resolution of a claim, standing alone, does not give rise to a cause of action under Section 1985. See Ginsburg v Stern, 125 F.Supp.596,603 (W.D.Pa.1954). The judicial resolution of Petitioner's divorce proceeding therefore cannot give rise to a cause of action under Section 1985 because this Court must accord that final judgment of the state court full faith and credit and cannot find it to be the product of a conspiracy. U.S. Const.art. IV, Section 1. There being no Article III case or

controversy present before this Court, it is

ADJUDGED that this action is DISMISSED under Federal Rule of Civil Procedure 12(b)(2) for lack of jurisdiction and the Clerk of Court is directed to close this case. It is also

ADJUDGED that all pending motions are DENIED as moot.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of June, 2002.

"S/ Federico A. Moreno"
FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:
Dawn B. Middlestead, pro se
192 S.W. 52nd Terrace
Plantation, FL 33317-3632

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-14212-GG

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT
NOV 01 2002
THOMAS K. KAHN
CLERK

DAWN B. MIDDLESTEAD, Plaintiff-Appellant,

versus

ARTHUR H. TAYLOR, Circuit
Judge, Dade County State of Florida,
LLOYD L. MIDDLESTEAD,
ET AL., Defendants-Appellees.

On Appeal from the United States District Court for the
Southern District of Florida

BEFORE: BIRCH, BARKETT and WILSON,
Circuit Judges

BY THE COURT:

On its own motion, the Court Dismisses this appeal as frivolous. See Eleventh Circuit Rule 42-4.

All remaining pending motions are DENIED AS MOOT.

APPENDIX B

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part as follows:

> " * * * No person shall be deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows:

> " * * * No state shall deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction, the equal protection of the law."

42 U.S.C. Section 1983 , as it appears in the United States Code, provides in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State,
>
> - * * subjects, or causes to be subjected, any citizen of the United States * * * within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted * ."
>
-

42 U.S.C. Section 1985(3), as it appears in the United States Code, provides in pertinent part:

> "If two or more persons in any State * * * conspire or go in disguise on the highway or on the premises of

another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws ; * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having or exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

Title 28 U.S.C. Section 1331, as it appears in the United States Code, provides in pertinent:

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Title 28 U.S.C. Section 1343, as it appears in the United States Code, provides in pertinent part:

"(a) The district courts shall have original jurisdiction

of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge

were about to occur and power to prevent;
(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights."

LOCAL RULE 7.1(b)(3), USDC-S-FL involved as it appears therein provide in pertinent part:

> With respect to any motion or other matter which has been pending and fully briefed with no hearing set thereon for a period of 90 days, the Clerk of the Court shall send to the Court and to all parties a "notification of 90 days Expiring and Ripeness For Hearing."* * When the Court receives such notification, it shall set the mater for hearing within 10 days of receipt of the notification or shall issue an order resolving the motion or other matter during that same 10 day period.

Rule 27(c), Fed.R.App.P., involved as it appears therein provide in pertinent part:

> A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding . * *"

The Florida Statutes involved as they appear therein provide in pertinent part:

"38.02 Suggestion of disqualification; grounds

APPENDIX C

proceedings on suggestion and effect—In any cause in any of the courts of this state any party to said cause, or any person or corporation interested in the subject matter of such litigation, may at any time * * show by suggestion filed in the cause * * If the truth of any suggestion appear from the record in said cause, the said judge shall forthwith enter an order reciting the filing of the suggestion, the grounds of his disqualification, and declaring himself to be disqualified in said cause."

"38.05 Disqualification of judge on own motion—Any judge may of his or her own motion disqualify himself or herself where, to the judge's own knowledge, any of the grounds for suggestion of disqualification, as named in s.38.02, exists * *."

"38.09 Designation of judge to hear cause when order of disqualification entered.—Every judge of this state shall advise the chief judge of the circuit upon the entry of an order of disqualification. An order of assignment shall then be entered as provided by the Florida Rules of Judicial Administration * * ."

"38.10 Disqualification of judge for prejudice; application; affidavits; etc.-Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of

causes in which the presiding judge is disqualified."

Florida Rules of Civil Procedure as they appear therein, provide in pertinent part:

"RULE 1.490 MASTERS (c) Reference. No reference shall be to a master, either general or special, without the consent of the parties * * ."

Family; Law Rules of Procedure as they appear therein, provide in pertinent part:

"Rule l2.490(b) Reference. (1) No matter shall be heard by a general master without an appropriate order of reference and the consent to the referral of all parties. * * (A) A written objection to the referral to a general master must be filed within 10 days of the service of the order of referral."

Rules of Appellate Procedure, as they appear therein, provide as follows:

"Rule 9.100. Original Proceedings (h) Order to Show Cause. If the petition demonstrates preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal, * * the court may issue an order directing the respondent to show cause, within the time set by the court, why relief should not be granted * * ."

The Florida Statutes, as they appear in Clerks of the Circuit Court, provide as follows:

"28.13. To keep papers.—The clerk of the circuit court shall keep all papers filed in the clerk's office

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with the utmost care and security, arranged in appropriate files (endorsing upon each the time when the same was filed)* *."

The Florida Constitution as it appears therein provides in Section 19(c)(4), as follows:

"County Courts shall have jurisdiction * * of all actions at law in which the matter in controversy does not exceed the sum of two thousand five hundred dollars ($2,500.00) exclusive of interests and costs * *."

APPENDIX C